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2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE WILLIAM ALSUP

5 PETRA MARTINEZ,)
6 PLAINTIFF,)
7 VS.) NO. C 09-5630 WHA
8 AMERICA'S WHOLESALE LENDER,)
ET AL.,)
9 DEFENDANTS.) SAN FRANCISCO, CALIFORNIA
10) THURSDAY
11) JANUARY 14, 2010
12) 8:00 O'CLOCK A.M.
13

12 **TRANSCRIPT OF PROCEEDINGS**

13 **APPEARANCES:**

14 **FOR PLAINTIFF:** MICHAEL PATRICK ROONEY, ESQUIRE
15 580 CALIFORNIA STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

16 **FOR DEFENDANTS:** SEVERSON & WERSON
17 ONE EMBARCADERO CENTER, 26TH FLOOR
18 SAN FRANCISCO, CA. 94111
BY: **KALAMA M. LUI-KWAN, ESQUIRE**
956-0439

20 **REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR**

21 OFFICIAL REPORTER - US DISTRICT COURT

22 COMPUTERIZED TRANSCRIPTION BY ECLIPSE

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24
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1 JANUARY 14, 2010

8:00 O'CLOCK A.M.

3 P R O C E E D I N G S

4 **THE CLERK:** CALLING 09-5630, PETRA MARTINEZ V.
5 AMERICA'S WHOLESALE LENDER.

6 COUNSEL, PLEASE STATE YOUR APPEARANCES.

7 **MR. ROONEY:** GOOD MORNING, YOUR HONOR. MICHAEL
8 ROONEY FOR PETRA MARTINEZ.9 **MR. LUI-KWAN:** GOOD MORNING, YOUR HONOR. KALAMA
10 LUI-KWAN FOR DEFENDANTS.11 **THE COURT:** OKAY. YOU REPRESENT ALL DEFENDANTS?12 **MR. LUI-KWAN:** ALL BUT MERS.13 **THE COURT:** ALL BUT WHO?14 **MR. LUI-KWAN:** MORTGAGE ELECTRONIC REGISTRATION
15 SYSTEMS, MERS.16 **THE COURT:** MORTGAGE WHO? I DON'T EVEN SEE THEM ON
17 HERE.18 **MR. LUI-KWAN:** THEY ARE THE FOURTH NAMED DEFENDANT ON
19 THE COMPLAINT.20 **THE COURT:** ALL RIGHT. LOOK. UNLESS YOU HAVE SOME
21 SETTLEMENT I HAVE A PLAN FOR YOUR CASE. SO YOU HAVE A
22 SETTLEMENT HERE?23 **MR. LUI-KWAN:** NO, YOUR HONOR.24 **THE COURT:** WHAT.25 **MR. ROONEY:** NO, NOT YET.

1 **THE COURT:** ALL RIGHT. LOOK. I'VE SEEN A LOT OF THESE
2 CASES. USUALLY IT IS A STALLING TACTIC, BUT I CAN'T SAY THAT FOR
3 SURE.

4 AND THE MOST SIMPLE WAY TO GET TO THE BOTTOM OF THIS
5 IS THIS: THE DEFENDANTS OUGHT TO BRING A MOTION FOR SUMMARY
6 JUDGMENT, AND YOU LAY OUT IN THE DOCUMENTS WHY IT IS THAT THE --
7 THIS WAS ALL DONE PERFECTLY RIGHT AND WHO HAS THE ORIGINAL
8 PAPER, HOW IT WAS, YOU KNOW, JUST TRACE IT THROUGH.

9 YOU OUGHT TO BE ABLE TO TRACE IT THROUGH, WHO HAS THE
10 ORIGINAL NOTE AND ALL THAT. CAN YOU DO THAT? IF YOU CAN'T,
11 THEN YOU'RE PROBABLY GOING TO LOSE THE CASE.

12 SO SURELY YOU CAN FIGURE OUT WHO IT IS. LOOK, SHE'S
13 ABOUT TO LOSE HER HOUSE, RIGHT?

14 **MR. LUI-KWAN:** YES, YOUR HONOR.

15 **THE COURT:** I'M NOT GOING TO LET A STRANGER COME IN
16 AND TAKE HER HOUSE. SO WHAT IS YOUR RIGHT TO COME IN THERE? AND
17 YOU GOT TO PROVE IT. YOU GOT TO PROVE IT.

18 SO DON'T ARGUE WITH ME. FILE THE SUMMARY JUDGMENT
19 MOTION, AND PROVE IT UP.

20 NOW, IF IT TURNS OUT THAT THEY HAVE THE RIGHT TO DO
21 THIS, AND THIS IS JUST A FRIVOLOUS CASE, THEN I WILL BE UNHAPPY
22 WITH YOU.

23 **MR. ROONEY:** IT IS NOT, YOUR HONOR. OTHER THAN A
24 REQUEST FOR THIS SORT OF PROOF THAT WE'VE MADE IN THE PAST, THE
25 FRAUD ALLEGATIONS ARE ABSOLUTELY A HUNDRED PERCENT CORRECT. AND

1 THE FACT THAT SHE WAS DEFRAUDED INTO THIS LOAN AND DEED OF TRUST
2 IN THE FIRST PLACE --

3 **THE COURT:** WHAT ARE YOU TALKING? WHAT WAS THE
4 FRAUD? WHAT WAS THE FRAUD THAT WAS COMMITTED ON HER?

5 **MR. ROONEY:** HER BROKER, AND ALONG WITH AMERICA'S
6 WHOLESALE LENDER, WHO IS THE ORIGINAL LENDER ON THIS THING,
7 COMPLETELY MISLED HER AS TO WHAT THE TERMS WERE GOING TO BE,
8 WHAT THE APR WAS GOING TO BE, WHAT HER MONTHLY PAYMENTS WERE
9 GOING TO BE. AND, BASICALLY, TALKED HER INTO GETTING HER
10 HUSBAND OFF THE HOUSE SO THAT SHE COULD TAKE THIS THING OUT ON
11 HER OWN, WHOLLY UNQUALIFIED AND COMPLETELY MISLED HER AS TO WHAT
12 SHE WAS GETTING HERSELF INTO.

13 **THE COURT:** DID SHE READ THE PAPERWORK?

14 **MR. ROONEY:** SHE RELIED ON HER BROKER'S
15 REPRESENTATIONS.

16 **THE COURT:** DOES SHE SPEAK ENGLISH?

17 **MR. ROONEY:** IT'S NOT HER FIRST LANGUAGE.

18 **THE COURT:** WAS THE NEGOTIATION DONE IN SPANISH?

19 **MR. ROONEY:** NO.

20 **THE COURT:** SO IT WAS DONE IN ENGLISH?

21 **MR. ROONEY:** YES.

22 **THE COURT:** ALL RIGHT. THIS IS THE WAY I'M GOING TO
23 DO IT. I'M NOT GOING TO GRANT A -- LOOK. I'M NOT GOING TO THROW
24 SOMEBODY OUT OF THEIR HOUSE UNTIL I UNDERSTAND THAT THE
25 DEFENDANTS HAVE DONE IT RIGHT.

1 WHEN YOU PROVE THAT UP, THEN THE BURDEN IS GOING TO
2 BE ON YOU IN IMPOSING THE SUMMARY JUDGMENT -- I'M NOW TALKING TO
3 THE PLAINTIFF -- TO EXPLAIN WHY IT IS THAT THEY ARE NOT ENTITLED
4 TO FORECLOSE.

5 AND SO YOU GOT TO LAY OUT IN SOME DETAIL, LAY OUT --
6 SHE OUGHT TO KNOW WHAT FRAUD WAS COMMITTED ON HER. SHE DOESN'T
7 NEED ANY DISCOVERY TO PROVE THAT.

8 AND YOU LAY IT ALL OUT, AND I'LL EVALUATE WHETHER OR
9 NOT I THINK THE CASE IS STRONG ENOUGH.

10 BUT THIS IS A WASTE OF TIME TO DO MOTIONS TO DISMISS
11 IN THESE CASES.

12 **MR. ROONEY:** I AGREE.

13 **THE COURT:** SO THAT'S THE WAY IT'S GOING TO BE. SO
14 I'M NOT DENYING IT ON THE MERITS. I WANT TO DO THIS ON A MORE
15 COMPLETE RECORD.

16 SO WHEN DO YOU WANT TO FILE YOUR MOTIONS?

17 **MR. LUI-KWAN:** WHEN IS THE EARLIEST HEARING DATE
18 AVAILABLE, YOUR HONOR?

19 **THE COURT:** YOU CAN FILE IT NEXT WEEK. WE WILL DO IT
20 ON A 35-DAY TRACK.

21 **MR. LUI-KWAN:** LET ME CONFER WITH MY CLIENT.

22 **THE COURT:** SO YOU JUST FILE IT ON A NORMAL 35-DAY
23 TRACK, AND WE CAN HAVE THIS WHOLE CASE DONE IN 45 DAYS,
24 PROBABLY, IF YOU GET CRACKING AND GET YOUR MOTION DONE.

25 NOW, IF IT TURNS OUT, THOUGH, THAT I THINK THEY HAVE

1 RAISED -- THE PLAINTIFF HAS RAISED SOMETHING THAT WOULD PREVENT
2 THIS, THEN I WILL -- I WOULD THEN SAY:

3 "OKAY, WE CAN'T DO IT YET. WE'VE GOT TO TAKE
4 DISCOVERY. WE'VE GOT TO HAVE A TRIAL."

5 BUT MORE THAN HALF THE TIME -- MAYBE NOT A HUNDRED
6 PERCENT -- I WOULD SAY TWO-THIRDS OF THE TIME IT TURNS OUT THESE
7 ARE COMPLETELY BOGUS CASES. AND THEY ARE JUST A WAY TO STALL.
8 AND THAT SOMEBODY WHO KNEW GOOD AND WELL WHAT THEY WERE GETTING
9 INTO IS USING ALL OF THESE -- MAKING ALL THESE CLAIMS.

10 AND I'M NOT SAYING THAT'S TRUE HERE, BECAUSE I HAVE
11 HAD ONE WHERE IT WAS ABSOLUTELY TRUE. AND COUNTRYWIDE WAS IN
12 THAT CASE.

13 IS COUNTRYWIDE IN THIS CASE?

14 COUNTRYWIDE WAS PART OF THE FRAUD IN THAT CASE. SO
15 THEY -- I UNDERSTAND IT CAN BE TRUE. BUT I ALSO UNDERSTAND THAT
16 BECAUSE THERE ARE A LOT OF TIMES WHEN PEOPLE WHO KNEW GOOD AND
17 WELL WHAT THEY WERE GETTING INTO ARE MISUSING THESE LAWSUITS,
18 RULE 11 MIGHT COME INTO PLAY.

19 **MR. ROONEY:** UNDERSTOOD.

20 **THE COURT:** ALL RIGHT. SO YOU FILE -- THIS IS DENIED
21 WITHOUT PREJUDICE TO A SUMMARY JUDGMENT.

22 **MR. LUI-KWAN:** MAY I ASK TWO FOLLOW-UP QUESTIONS,
23 YOUR HONOR?

24 **THE COURT:** SURE.

25 **MR. LUI-KWAN:** FIRST IS: HOW DOES THIS AFFECT THE

1 PENDING MOTION TO REMAND?

2 **MR. ROONEY:** YOUR HONOR, PLAINTIFF IS WILLING TO
3 WITHDRAW THE MOTION TO REMAND.

4 **THE COURT:** TO WHAT, REMAND?

5 **MR. ROONEY:** WE FILED SEVERAL DOCUMENTS. ONE WAS A
6 NOTICE TO DISMISS THE FEDERAL CLAIMS AND ANOTHER ONE WAS --

7 **THE COURT:** WELL, IF YOU'VE GOT A MOTION TO REMAND, I
8 HAVE GOT TO RULE ON IT. IF I DON'T HAVE JURISDICTION, I CAN'T
9 JUST LET YOU WITHDRAW IT.

10 **MR. ROONEY:** WELL, IT'S SET FOR NEXT MONTH.

11 **THE COURT:** WE WILL GO AHEAD AND HEAR IT.

12 **MR. ROONEY:** THANK YOU.

13 **THE COURT:** BUT IN THE MEANTIME, YOU'RE THE ONE THAT
14 BROUGHT THE CASE TO FEDERAL COURT.

15 **MR. LUI-KWAN:** YES, YOUR HONOR.

16 **THE COURT:** RIGHT? SO ON THE ASSUMPTION THAT WE'RE
17 GOING TO STAY HERE I'M GOING TO -- I'M NOT RULING ON THE REMAND
18 MOTION NOW. I HAVE TO -- I'M JUST SAYING I'M NOT GOING TO GRANT
19 THIS MOTION TO DISMISS.

20 I WANT TO SEE A SUMMARY JUDGMENT MOTION. THAT IF IT
21 TURNS OUT WE SEND THE CASE BACK TO STATE COURT, THEN WASTED
22 EFFORT, I GUESS.

23 **MR. LUI-KWAN:** THANK YOU, YOUR HONOR.

24 AND THEN, THE SECOND AND FINAL FOLLOW-UP QUESTION IS:
25 IN YOUR COMMENTS ON THE SUMMARY JUDGMENT MOTION, YOU HAD

1 EXPLAINED THAT YOU WOULD LIKE TO SEE NOT ONLY THAT THE PROCESS
2 WAS FOLLOWED, BUT ALSO TO PROVE THAT WE POSSESSED THE ORIGINAL
3 NOTE.

4 **THE COURT:** WELL, YES, OF COURSE. SOMEBODY HAS GOT TO
5 BE -- OR YOU GOT TO EXPLAIN THAT YOU DON'T NEED TO HAVE THE
6 ORIGINAL NOTE.

7 **MR. LUI-KWAN:** THANK YOU.

8 **THE COURT:** BUT, LOOK. THINK ABOUT IT THIS WAY. AND,
9 IN FACT, I'VE HAD CASES LIKE THIS, TOO. A COMPLETE STRANGER
10 COMES IN AND SAYS:

11 "WE HAVE THE RIGHT TO FORECLOSE ON THIS HOUSE."

12 AND THEY HIRE A LAWYER THAT LOOKS AS REPUTABLE AS YOU
13 COME IN HERE. AND, IN FACT, IT'S A FRAUD. THEY DON'T HAVE THE
14 RIGHT AT ALL. IT WAS AN INTERNET SCAM.

15 SO HOW DO I KNOW THAT THESE BANKS HAVE DONE IT, HAVE
16 STANDING TO FORECLOSE?

17 NOW, MY GUESS IS PROBABLY THEY DO. I DOUBT THAT THEY
18 WOULD BE COMMITTING A FRAUD THAT MASSIVE, BUT I CAN'T JUST TAKE
19 YOUR WORD FOR IT. I WANT TO SEE -- I WANT TO SEE A CHAIN OF
20 CUSTODY THAT THESE PEOPLE ALL OVER THE WORLD, BANK OF NEW YORK
21 AND ALL THAT, THAT THEY, IN FACT, HAVE THE RIGHT TO DO WHAT THEY
22 ARE DOING.

23 ALL RIGHT?

24 **MR. LUI-KWAN:** YES, YOUR HONOR.

25 ONE FINAL QUESTION. WILL THERE BE A WRITTEN OPINION,

1 YOUR HONOR?

2 **THE COURT:** NO.

3 **MR. LUI-KWAN:** OKAY.

4 **THE COURT:** BECAUSE I'M NOT RULING ON THIS. I'M GOING
5 TO SEND OUT AN ORDER, YES. I'LL SEND OUT AN ORDER SAYING THAT
6 THIS IS DENIED AND WE'RE GOING TO HAVE SUMMARY JUDGMENT. AND
7 THAT'S THE WAY WE'RE GOING TO TEE THIS UP.

8 PLEADINGS AND WHETHER OR NOT IN THEORY ALL THESE
9 VARIOUS LAWS WERE VIOLATED.

10 WHAT'S BETTER TO DO IS FIND OUT WHAT THE FACTS ARE.
11 BELIEVE ME, IF THEY ARE ENTITLED TO FORECLOSE, I'M GOING TO LET
12 THEM DO IT. SO --

13 **MR. ROONEY:** IF THEY PROVE THAT, YOUR HONOR, MY
14 CLIENT WILL ALSO, I'M SURE.

15 **THE COURT:** WELL, SHE MIGHT ALSO HAVE TO PAY SOME
16 FEES FOR THIS LAWSUIT, IF THAT'S THE CASE.

17 ALL RIGHT. THANK YOU.

18 **MR. ROONEY:** THANK YOU.

19 **MR. LUI-KWAN:** THANK YOU.

20 (THEREUPON, THIS HEARING WAS CONCLUDED.)

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1
2 CERTIFICATE OF REPORTER3
4 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY
5 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED
6 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO
7 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE
RECORD OF SAID PROCEEDINGS.8
9 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR
10 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING
11 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE
OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.12
13 THE FEE CHARGED AND THE PAGE FORMAT FOR THE
14 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL
CONFERENCE.15
16 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS
1ST DAY OF FEBRUARY, 2010.17
18
19
20
21 /S/ KATHERINE WYATT
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